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In The

Supreme Court

of the

United States

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OCTOBER TERM, 1906

COPPER QUEEN CONSOLIDATED MINING COMPANY,
Appellant,

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA,
Appellee.

No. 280

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA

BRIEF ON BEHALF OF APPELLANT

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STATEMENT.

"The Copper Queen Consolidated Mining Com-
"pany made application that a writ of certiorari

"should issue out of this Court by an Associate "Justice thereof, directed to the Territorial Board "of Equalization, requiring that Board to certify "certain records to this Court, and show cause why "certain acts and proceedings complained of in "said application should not be declared void and "vacated. Upon the application, on September "22, 1905, a writ was issued by one of the As-"sociate Justices, returnable before the full bench "of this Court on the 17th day of November, "1905. On November 16, 1905, petitioner filed "in this Court its amended application for a writ "of certiorari.

"The Board of Equalization made return in "compliance with the writ, but interposed a de-"murrer to the amended application.

"By consent of the parties, expressed in open "Court, the right of the petitioner to the writ was "argued before the full bench upon this demurrer. "Therefore, we may with propriety consider the "questions raised by demurrer as if no writ had "been issued, and determine whether, upon the "facts set forth in the amended application thus "conceded to be true, the petitioner is entitled to "relief.

(Statement by Supreme Court of the Territory, Rec. p. 61.)

The amended application for writ of certiorari is as follows (Rec. pp. 7-11):

"Territory of Arizona, County of Cochise, ss.

"Walter Douglas being duly sworn, deposes "and says: That the Copper Queen Consolidat-"ed Mining Company, the applicant herein, is a

"corporation duly created and existing by virtue of "the laws of the State of New York, and is duly "authorized to conduct its corporate business in "the Territory of Arizona;

"That deponent is the General Manager and "duly qualified and appointed resident corporate "agent of said Company, and resides in the City "of Bisbee, in the County of Cochise, said Terri- "tory, and makes this affidavit in behalf of said "applicant;

"That said corporation is a resident and tax- "payer of said Cochise County, and as such is "beneficially interested in this application and the "matters herein set forth and complained of;

"That the said applicant is the owner of a large "amount of real and personal property situate in "said County which is used and required in con- "ducting its corporate business in said County, "which property is subject to assessment and taxa- "tion for County and Territorial purposes;

"That said property includes certain patented "mines, certain work horses and certain saddle "horses situate in said county which were returned "by said applicant to the Assessor of said County "for taxation for the year 1905; that said proper- "ty was thereafter listed for taxation by said As- "sessor upon the assessment roll of said County "for said year, and is subjected to taxation for "County and Territorial purposes for said year; "that said property of said applicant, said Copper "Queen Consolidated Mining Company, is in- "cluded within the property the assessed valuation "of which has been increased by the unlawful ac- "tion of the Territorial Board of Equalization "hereinafter complained of and alleged;

"That the persons above named constitute, and "at all times hereinafter referred to have consti- "tuted the Territorial Board of Equalization of "the Territory of Arizona:

"That on the 14th day of August, 1905, as "deponent is informed and believes and therefore "alleges, the said Board met at the office of the "Territorial Auditor of said Territory, at Phoenix, "and continued in session from day to day until "after the 17th day of August, 1905;

"Deponent alleges that while said Board was "so in session on said 17th day of August, 1905, "having under examination the various assessments "and abstracts of assessment rolls returned to it "from the various counties in the Territory, so "far as regards the Territorial tax, and having "under consideration the question whether the "valuation of property in each County bears a fair "relation or proportion to the valuation in all "other counties in the Territory, and with the al- "leged purpose of equalizing the rate of assess- "ment in the various counties, the same being a "judicial matter, and the said Board exercising ju- "dicial functions in that behalf, the said Board "on the 17th day of August, without authority of "law and in excess of the jurisdiction conferred on "it by law, by order, added to the assessed val- "uation of patented mines in the County of Co- "chise for the year 1905, which had been thereto- "fore fixed by the Assessor of said County and the "Board of Equalization thereof, and returned in "the abstract of the Assessment roll of said Coun- "ty above referred to, at $223,018.47, 1500 per "cent. thereof, which was an increase of $3,345,- "277.05;

"That the said Board in like manner, and without authority of law and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of work horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $50,211.00, 19 per cent. thereof, which was an increase of $9,989.00;

"That said Board in like manner, and without authority of law, and in excess of its jurisdiction, on said 17th day of August, 1905, by order, added to the valuation of saddle horses in said County for the purpose of taxation of the same for the year 1905, which had been theretofore fixed by the Assessor of said County and the Board of Equalization thereof, and returned in the abstract of the assessment roll of said County above referred to, at $20,390.00, 31 per cent. thereof, which was an increase of $6,350.00;

"Deponent is informed and believes, and therefore alleges, that said Territorial Board of Equalization did not change the assessed valuation of any other class of property in said Cochise County for the purpose of taxation of the same for the year 1905, as fixed by said Assessor and said County Board of Equalization and returned in said abstract of assessment roll, except the assessed valuation of improvements on unpatented mines, which said assessed valuation was increased by said Territorial Board of Equalization by adding thereto 1000 per cent. of said valuation;

"Deponent further alleges that while said Ter-

"ritorial Board of Equalization was so in session "on said 17th day of August, 1905, for the pur- "pose aforesaid, the said Board, without authority "of law and in excess of the jurisdiction conferred "on it by law, by order increased the assessed val- "uation of some special class or classes of property "in each and every other county of said Territory, "over and above the assessed valuation thereof for "the year 1905, as fixed by the assessors and boards "of equalization of the respective counties and re- "turned in the abstract of assessment rolls from "said counties;

"Deponent alleges that by so increasing the val- "uation of said special classes of property in said "counties, said Territorial Board of Equalization "increased the aggregate valuation of property in "the following named counties (including each "and every county in the Territory) over and "above the aggregate valuations of property there- "in as fixed by the respective assessors and boards "of equalization of said counties for the year 1905, "and returned in the abstracts of assessment rolls "from said counties, as follows, to-wit:

"County.	"Amounts of Increase by Territorial Board of Equalization.
"Apache	$ 6,696.30
"Coconino	81.37
"Cochise	3,370,216.60
"Graham	2,158,130.64
"Gila	996,731.70
"Maricopa	55,500 81
"Mohave	597,597.98
"Navajo	2,336.50
"Pinal	13,945.54

"Pima	803,745.08
"Santa Cruz	323,565.00
"Yuma	77,385.00
"Yavapai	1,148,127.77
	$9,554,060.29

"Deponent alleges that in no instance did said "Territorial Board of Equalization diminish the "aggregate valuation of property in any county as "fixed by the assessor and board of equalization "of said county for the year 1905 and returned in "the abstract of assessment roll of said county;

"That by the said action of said Territorial "Board of Equalization in so increasing the said "aggregate valuation of property in each and every "county in this Territory, the said Board unlaw- "fully increased the aggregate valuation of prop- "erty in the Territory for the purposes of taxation "of the same $9,554,060.29 over and above the "sum of the aggregate valuations of the several "counties therein as fixed, for the year 1905, by "the assessors and boards of equalization of the "respective counties and returned to the Territo- "rial Auditor in said abstracts of assessment rolls "of said counties, as will more fully and at large "appear by reference to the tabulated statement "above set forth;

"Deponent alleges that each and all of the said "changes so made in said assessed valuation of "said property in said Cochise County were by the "said Board of Equalization certified to the Board "of Supervisors of Cochise County by the Chair- "man and Secretary of said Board of Equaliza- "tion; that, as deponent is informed and believes

"and therefore alleges, the Board of Supervisors "of said Cochise County thereafter ordered the "said changes made by said Territorial Board of "Equalization in said assessed valuation of prop- "erty in said County to be placed on the assess- "ment roll of said County for said year 1905;

"Deponent alleges that said last named Board "caused the assessed valuation of the said patent- "ed mines, work horses and saddle horses owned "by applicant herein, and which has been returned "for taxation and listed on said assessment roll for "1905 as aforesaid, and were thereon assessed to "applicant for said year (which assessed valuation "had been theretofore fixed by said Assessor and "the Board of Equalization of said County as "aforesaid) to be changed on said assessment roll "to conform to the said changes made in the as- "sessment of said respective classes of property by "said Territorial Board of Equalization;

"That the duplicate assessment roll of said "County for the year 1905, embodying said "changes, and with the warrant of the Chairman "of the Board of Supervisors of said County "thereto affixed, was thereafter delivered to the "Tax Collector of said County, and that the said "Tax Collector has made demand upon said ap- "plicant for the payment of the taxes appearing "thereon to be due;

"That by the action of said Territorial Board "of Equalization in making the increases aforesaid, "the assessed valuation of the property owned by "and assessed to said applicant in said County, for "purposes of taxation for said year 1905, was un- "lawfully and without authority of law changed "and increased from the assessed valuation thereof

"for said year as fixed by the Assessor and Board "of Equalization of said County and returned in "said abstract of assessment roll of said County "as follows, to-wit:

"Patented Mines from $56,513.40 to $904,-214.40.

"Work Horses from $1,120.00 to $1,33[illegible]0.

"Saddle Horses from $120.00 to $157.20.

"Thereby making a total increase of $847,-"951.00 in the assessed valuation of applicant's "property in said County for purposes of taxation "for said year 1905 over and above that fixed by "said Assessor and Board of Equalization of said "County for said year and returned in said ab-"stract of said assessment roll, upon which in-"crease applicant is required to pay taxes for said "year 1905;

"That in so proceeding to increase the aggre-gate valuation of property in the Territory as "aforesaid and in so increasing the assessed valua-"tion of special classes of property in said Cochise "County and in the other said counties of said "Territory, said Territorial Board of Equalization "was exercising judicial functions and exceeded its "jurisdiction;

"That the said applicant has no appeal nor any "plain, speedy and adequate remedy to obtain re-"lief from said unlawful acts of said Board, ex-"cept by writ of certiorari to review and set aside "and vacate the said proceedings of said Board.

"Wherefore, the said applicant prays that a writ "of certiorari may be forthwith issued out of this "Court by an Associate Justice thereof directed to "said Territorial Board of Equalization command-

"ing and requiring said Board to certify its record, "proceedings and minutes of said meeting on said "17th day of August, and also the several ab- "stracts of assessments furnished to and filed with "said Board by the respective Boards of Supervis- "ors of the several counties of this Territory show- "ing the values of property in said respective coun- "ties prior to the raise and increase by said Terri- "torial Board herein complained of, and also all "other records and papers which in any manner "relate to or exhibit the acts and proceedings of "said Board herein complained of and referred to, "to our Supreme Court at the City of Phoenix on "the 17th day of November, A. D., 1905, and "that the said Territorial Board of Equalization "then and there show cause to our Supreme Court, "if any it shall have, why its acts and proceedings "herein complained of should not be declared void "and vacated and set aside, and that said corpora- "tion have such further or other order or relief as "is meet and proper in the premises.

"WALTER DOUGLAS.

'Subscribed and sworn to, etc.

SPECIFICATION OF ERRORS.

The judgment of the Supreme Court of the Territory of Arizona sustaining the demurrer of the appellee to the application of appellant and dismissing the application and quashing the writ heretofore allowed in favor of appellant, is manifestly erroneous, in this, that by the record aforesaid it appears that the Territorial Board of Equalization in performing the acts alleged and complained of in the application exceeded its jurisdiction, and to sustain the specifica-

tion of errors the appellant presents the following propositions:

I.

THE TERRITORIAL BOARD OF EQUALIZATION MAY, FOR THE PURPOSE OF ADJUSTING AND EQUALIZING, INCREASE THE AGGREGATE VALUE OF ONE COUNTY AND DECREASE THAT OF ANOTHER, BUT IT HAS NO POWER TO INCREASE THE AGGREGATE VALUATION OF PROPERTY IN THE TERRITORY ABOVE THE VALUATIONS RETURNED BY THE BOARDS OF SUPERVISORS OF THE SEVERAL COUNTIES.

II.

THE TERRITORIAL BOARD OF EQUALIZATION IN EQUALIZING AND ADJUSTING PROPERTY VALUATIONS BETWEEN THE SEVERAL COUNTIES HAS NO POWER TO INCREASE OR DIMINISH THE VALUATIONS OF CERTAIN KINDS, CLASSES, SUB-CLASSES OR GRADES OF PROPERTY WITHIN ANY COUNTY. THE TERRITORIAL BOARD MUST DEAL WITH THE RESPECTIVE VALUATIONS AS RETURNED BY THE COUNTIES AS ENTIRETIES BY MAKING SUCH CHANGES IN EACH COUNTY VALUATION AS A WHOLE AS WILL RELATIVELY EQUALIZE THE ENTIRE PROPERTY VALUES IN THE DIFFERENT COUNTIES.

ARGUMENT.

POINT I.

The Territorial Board of Equalization is wholly a creature of statute and is of special and limited jurisdiction. It is essential to the validity of its acts that they should be authorized by some express pro-

vision of the statute, otherwise they are absolutely null and void.

Central Pacific R. R. Co. vs. Evans, 111 Fed. Rep., 79.

1 *Cooley on Taxation,* p. 772, 3rd Edition.

The statutory authority under which the Territorial Board of Equalization may act is found in Revised Statutes of Arizona, 1901, paragraphs 3877 and 3880, and paragraph 3879 as amended by Act No. 23 Laws 1903, the same being re-enacted *verbatim* from paragraphs 2655, 2657 and 2658, Revised Statutes of Arizona, 1887. (Except as the amendment of paragraph 3879.) In the revision of 1887 paragraphs 2655, 2657 and 2658 were adopted almost *verbatim* from paragraphs 2279, 2281 and 2282 of the General Laws of Colorado, 1877,, the same being identical with paragraphs 2863, 2878 and 2879 of the Revised Statutes of Colorado of 1883, all of which will be clearly seen by the following comparison (the language of the respective statutes wherein they differ being for convenience printed in italics):

Pars. 2279, 2281 and 2282 General Laws of Colorado. 1877	Pars. 3877, 3879 and 3880 Revised Statutes Arizona 1901.
2279. Sec. 40. Immediately after the *assessment roll is completed, the county* clerk shall make *out* an abstract *thereof* containing the whole number of acres of land listed in the county,	3877. (Sec. 47.) Immediately after the *adjournment of the board of equalization in July, the* clerks *thereof* shall make an abstract *of the assessment roll,* containing the whole number of acres

and the valuation thereof; the whole number of miles of railroad in the county, and the value thereof; the total valuation of town lots; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; *the whole number of musical instruments, and their total value; the total value of clocks, watches, jewelry, gold and silver plate;* the gross amount of all other property, *with money and credits,* which abstract the clerk shall make out in duplicate, and transmit one copy forthwith to the auditor *of the State;* but the *State* board of equalization is authorized to diminish or add to the

of land, *other than town or city lots,* listed in the county, and the valuation thereof, *and the value of the improvements thereon;*. the total valuation of town *or city* lots *and the value of the improvements thereon;* the whole number of miles of railroad *with*in the county, and the value thereof; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, *and the total valuation of all taxable property;* which abstract the clerk shall make out in duplicate, *filing one copy in the office of the board of supervisors,* and transmit*ting*

above list, and to require such different or further matters to be returned as it may deem advisable.

one copy forthwith to the *territorial* auditor; but the *territorial* board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable, *and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.*

2281. Sec. 42. The *state* board of equalization shall consist of the *governor, secretary,* auditor, *treasurer of the state and the attorney general.* They shall sit at the office of (the) *secretary of the state, at the capital,* on the second Monday *of* August of each year, and are hereby authorized and required to examine the various assessments, *as* far as regards the *state*

3879. (Sec. 49) (As amended by Act 23, Laws 1903.) The *Territorial* Board of Equalization shall consist of the *Territorial Auditor, who shall be Chairman of the Board, and one member from each of the Judicial Districts of the Territory, to be appointed from said Districts by the Governor, by and with the advice and consent of the Legislative Council, for*

tax, and equalize the rate of assessment in the various counties, whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

the term of two years, or until their successors shall be appointed and qualified, and they shall before entering upon the duties of their office take the statutory oath of office and file the same in the office of the Secretary of the Territory. The members of said board shall receive in full of all compensation ten dollars per diem for the days actually in session, and twenty cents per mile, mileage, in going to and from the place of meeting, said mileage to be computed by the nearest practicable route (no constructive mileage shall be allowed). In case of a vacancy in said Board, the Governor shall fill such vacancy by appoint- a suitable person therefor from the Judicial District from which the vancancy occurred. The Governor shall at the end of each session of said Board, audit the account of the members thereof for per diem and mileage, and

the same shall be paid out of the general fund of the Territory upon warrants drawn by the Territorial Auditor upon the Teritorial T r e a s u rer therefor. Provided, that no member of said Board shall receive a per diem for more than twenty days in each year. If any of the said members of the Territorial Board of Equalization shall fail to attend any of the meetings of said Board, as required by law, it shall be the duty of the Governor to appoint a competent person or persons to act in the place of said absent member or members, during his or their absence, and the said person so appointed shall have the same powers and authority, with the same compensation, as if regularly constituting said Board. They shall sit at the office of the *Territorial Auditor* on the second Monday *in* August of each year, *for the purpose of*, and *they* are hereby authorized

and required to examine the various assessments, *so* far as regards the *Territorial* tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different Assessors *and Boards of Equalization. The said Board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the Territorial Audtor and Territorial Treasurer, which will aid them in the disposition of such business. . The said Board shall keep a record of the business transacted by it, and are authorized to employ a secretary, at a compensation of five dollars per day while engaged in actual service, such compensation not to exceed the sum of three hundred dollars in any one year; his account for*

compensation shall be audited by the chairman of said Board from time to time, as such service shall be performed by said secretary, and shall be paid in the same manner as the compensation of the members of said Board is paid. A sum not exceeding one hundred dollars per year is hereby annually appropriated from the general fund for the purchase of necessary supplies and for the payment of incidental office expenses of said Board, and the Territorial Auditor shall draw his warrants in payment of same upon the order of the Board, and the Territorial Treasurer is hereby directed to pay said warants as other warrants are paid.

2282. Sec. 43. Said Board shall ascertain whether the value of *real estate* in each county bears a fair relation or proportion to the valuation in all other counties

3880. (Sec. 50.) *The* said board shall ascertain whether the valuation of *property* in each county bears a fair relation or proportion to the valuation in all other

of the *state*, and on such examination they may increase or diminish the *aggregate* valuation of *real estate* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *real estate* in the *state;* but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the *clerks* of the several counties.

counties *in* the *territory*, and on such examination they may increase or diminish the valuation of *property* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *property* in the *territory;* but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the *boards of supervisors* of the several counties. *And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.*

Prior to the adoption by the Legislature of Arizona of Paragraphs 2279, 2281 and 2282 of the General Laws of Colorado, this statute was given judicial construction by the Supreme Court of Colorado in the case of the People *ex rel.*, Crawford vs. Lathrop, 3 Colorado, 428, in which the court says, at page 462:

"'All taxes shall be uniform upon the same "class of subjects within the territorial limits of "the authority levying the tax.' It was to meet

"this difficulty and accomplish this end that the "State Board of Equalization was created, with "powers to *adjust* and *equalize*. For this pur- "pose the Board is required by statute (General "Laws, Sec. 42, p. 756) to 'examine the various "assessments as far as regards the State tax, and "equalize the rate of assessments in the various "counties whenever they are satisfied that the "scale of valuation has not been adjusted with "reasonable uniformity by the different assessors.' "By section 43 the Board is required to ascertain "whether the 'valuation of real estate in each "county bears a fair relation or proportion to the "valuation of all other counties of the State, and "on such examination they may increase or dimin- "ish the aggregate valuation of real estate in any "county as much as in their judgment may be "necessary to produce a just relation between all "the valuations of real estate in the State, but in "no instance shall they reduce the aggregate valu- "ation of all the counties below the aggregate "valuation as returned by the clerks of the several "counties.' Under these sections it is claimed "that the Board has the power to increase the "aggregate valuation of the real and personal "property of the State over and above the aggre- "gate valuation as returned by the clerks of the "different counties.

"This claim, if well founded, makes them prac- "tically a board of assessors, with power to fix "and determine values as well as to adjust and "equalize valuations.

"In all cases of taxes by valuation an assessment "is indispensable and primary. It lies at the "foundation of the proceeding. The term as

"commonly employed embraces both the listing of "taxable property and the determination of its "value. This assessment is not only indispens- "able, but in making it the provisions of the "statute under which it is made must be observed "with particularity. If this were not compul- "sory; if the officers were at liberty to disregard "important provisions of the statute in this initia- "tory step, the chief protection which the law has "intended for individuals in tax cases would be "removed. (Cooley on Taxation, pp. 259-60).

"Our statutes provide (General Laws, p. 742, "Sec. 4) that 'all property, both real and personal, "within the state, not expressly exempt by law, "shall be subject to taxation.' They further pro- "vide (General Laws, p. 747, Sec. 14) that 'all "taxable property shall be listed and valued each "year, and shall be assessed at its full cash value.' "Let us then inquire where, under our Constitu- "tion and laws, this important power of determin- "ing the valuation of taxable property as a basis "of taxation is lodged.

"The Constitution provides (Sec. 8, Art. 14) "for the election in each county, each alternate "year, of a county assessor. He is thus a con- "stitutional officer, and though his duties are left "unprescribed, the essential duties of an assessor "must be presumed to have been contemplated. "Is there not here a plain intention on the part "of the people to preserve local control over the "valuation of property for purposes of taxation? "This local control existed under the territorial "form of government under which they had been "living, and is this not an effort to secure it be- "yond contingency? In view of this provision

"and of other constitutional limitations it may be "gravely doubted whether it is competent for the "legislative authority to take from county assess- "ors the substantial control of valuations of prop- "erty for State taxation, and vest it in a central "authority. The question here presented is not "what the legislative authority could do in this "respect, but what it has done.

"Following the provisions of the Constitution "our statutes (General Laws, Sec. 121, p. 247) "provide for the election of a county assessor in "each county of the State, who shall give bond to "the people of Colorado and subscribe an oath "for the faithful performance of his duties as "assessor.

"Section 25 (General Laws, p. 750) requires "the county commissioners of each county to fur- "nish the assessors suitable blank forms for assess- "ment, and such instructions as shall be necessary "to secure full and uniform assessments and re- "turns.

"Section 21 (General Laws, p. 749) requires "the assessor to leave with each resident of his "county, etc., a notice requiring him to make out "and return to the assessor a list of his property "subject to taxation, and to leave him a blank "form upon which the list may be made. This "return by another section is to be under oath.

"Section 23 (General Laws, p. 750) provides "for the valuation of certain property by the "owners.

"Section 32 (General Laws, p. 753) provides "that all property shall be valued by the assessor, "except such as may be required to be valued by

"the owner, in section 23 of the act.

"Section 11 (General Laws, p. 744) provides "that the assessor shall assess all personal prop- "erty situate or being in his county.

"Section 27 (General Laws, p. 761) provides "for the assessor to assess in case of failure of "owner to give in his list according to law.

"Section 33 (General Laws, p. 753) provides "for the delivery of the assessment roll by the "assessor to the county clerk.

"Section 37 (General Laws, p. 754, provides "an oath to be taken by the assessor and attached "to the assessment rolls, to the effect that he has "made diligent inquiry and examination to ascer- "tain all property within his county subject to taxa- "tion; that he has assessed it equally and uni- "formly according to his best judgment and in- "formation and belief at its full cash value; that "he has faithfully complied with all duties im- "posed on the assessor by the revenue laws; that "he has not imposed any unfair assessment "through malice nor allowed any one to escape a "just and equal assessment through favor.

"Section 38 (General Laws, p. 754) provides "that the county commissioners of each county "shall constitute a board of equalization for the "correction and completion of the assessment "rolls, with power to supply omissions in the "assessment rolls, and for the purpose of equaliz- "ing the same, to increase, diminish or otherwise "alter and correct any assessment or valuation. "It provides in case of change of the assessment "of any tax payer, that he shall be notified and

"have a hearing before the board. It constitutes "them a *quasi* court to hear any and all complaints "of the tax payer touching the valuation or listing "of his property, with full power to adjust and "correct the assessment roll as in their judgment "they may deem proper and right, thus adding "statutory duties to their constitutional duty 'to "adjust and equalize.' Other sections of the law "might be cited, but those mentioned suffice for "our purpose. We find here a complete system, "with well defined and minutely prescribed rules "guarding the property right of the citizen; "guarding equally the revenue necessities of the "State, acting through the instrumentalities of "owners and the assessors chosen by the electors "of the several counties, listing, valuing and re-"turning taxable property under the sanction of "an oath, with the board of county commissioners "acting as a board of appeal and review, all for "the one purpose of ascertaining, determining and "fixing the value of taxable property in each "county of the State as a basis of taxation. The "statute provides for the transmission of these "assessment rolls of the county to the board of "equalization, and contemplates that one assess-"ment shall be made for both State and local "taxes. * * * * *

"The assessor is thus made an integral part of "the revenue system, which not only thus specifies "and defines his duties, but assigns to other officers "and boards equally well defined and separate "duties. The assessor shall list and value. The "board of commissioners shall equalize, adjust, "increase and diminish, supply omissions and cor-"rect errors and hear complaints. The county

"clerk shall prepare assessment rolls and compute "and extend the tax therein. The State board "of equalization shall adjust and equalize valua- "tions, and lastly, the county treasurer shall collect "the tax. In seeking for legislative intent, refer- "ence must be had not only to the form and "phraseology of the particular section under con- "sideration, but any part must be viewed in con- "nection with the whole, so if possible to harmon- "ize and give effect to the whole.

"Looking then to the provisions of the Consti- "tution and the statute, we are clearly of the opin- "ion that the power to fix and determine the valu- "ation of taxable property is lodged by them in "the assessor and the board of county commission- "ers of the several counties of the State, and that "when they have under the law performed this "duty and exercised this power, that the sum of "the valuations of the several counties so by them "found must be taken as the aggregate valuation "of all the property in the State, and is conclusive "and final as against the State board of equaliza- "tion. The State board may, for the purpose of "adjusting and equalizing, increase the aggregate "valuation of one county, and decrease the aggre- "gate valuation of another, but they have no "power to increase the sum of all the valuations of "the several counties of the State. The aggre- "gate valuation has been found for them, and "fixed by the authority and in the mode prescribed "by the law. This view is not only sanctioned by "the force of the general provisions of the statute "considered as a whole, but also by the phraseol- "ogy of the sections under consideration. The "board is to adjust and equalize the valuation.

"This term *valuation* here imports values already "estimated and fixed, and must be referred for the "measure of its force and meaning to the mode "prescribed by law for estimating and fixing valu- "ations. The aggregate material with which the "board can deal is thus limited; they may adjust "and equalize it among the several counties, but "they cannot add to its volume.

"It is claimed that in that the statute prohibits "the board from decreasing 'the aggregate valua- "tion of all the counties below the aggregate val- "uation as returned by the clerks of the several "counties' (General Laws, p. 756, Sec. 43), the "power to *increase* must be implied.

"A power so vast and important, involving the "integrity of constitutional limitation, cannot be "founded on an implication of law. A statute in "derogation of the rights of property, or which "takes away the estate of the citizen, must be "strictly construed. *Sharp v. Spier*, 4 Hill, 76: "*Bloom v. Burdick*, 1 *id.*, 130. * *

"We are, therefore, of the opinion that the "board of equalization, in making the increased "valuation, acted without authority of law, and "that their action in this respect is void."

A judicial interpretation given the statute in the state of its origin, prior to the adoption thereof, becomes a part of the statute itself, with the same force and to the same extent as though the decision was written into the law.

Henrietta M. & N. Co. v. Gardner, 173 U. S., 123.

Goldman v. Sotelo, 7 *Ariz.*, 23.

Furthermore, upon the adoption of a statute where the law antecedently to the adoption was settled by judicial interpretation thereof, the mere change of phraseology will not be construed a change of the law unless such phraseology evidently purports an intention in the Legislature to work a change.

McDonald v. Hovey, 110 *U. S.*, 619.

Metropolitan Railway Co. v. Moore, 121 *U. S.*, 558.

Willis v. Eastern Trust & Banking Co., 169 *U. S.*, 295.

The majority of the Territorial Supreme Court, in its opinion by Justice NAVE, refused to follow the interpretation given the Colorado statute by reason of the differences in phraseology of the two statutes. The Court says: (Rec., pp. 63-64.)

"The material differences in phraseology in the "two paragraphs we have indicated by italics.
"* * * * *

"It is to be noted that the Colorado statute pro- "vides: 'Said board shall ascertain whether the "valuation of *real estate* in each county bears a "fair relation,' etc., and that 'they may increase "or diminish the *aggregate* valuation of *real es-* "*tate* in any county,' while the Arizona statutes "provide: 'Said board shall ascertain whether "the valuation of *property* in each county bears a "fair relation,' etc., and that 'they may increase "or diminish the valuation of *property* in any "county.' In the Arizona statute the word 'prop-

"erty' appears where the words 'real estate' ap-
"pear in the Colorado statute, and the word 'ag-
"gregate' which appears in the Colorado statute
"does not appear in the Arizona statute. While
"by reason of this difference the meaning of the
"Arizona statute does not necessarily differ from
"that of the Colorado statute with reference to
"the power of the Territorial Board of Equaliza-
"tion to increase the sum of the valuations of the
"several counties as fixed by the county officers,
"there is, nevertheless, a very material difference
"in the meaning of these statutes in other respects."

From which it will be seen that the court, by the use of italics, points out the differences in phraseology of the two statutes, which the court frankly states do not necessarily change the meaning of the respective statutes, while the "very material differences in the meaning of the statutes in other respects" are not pointed out by the court in any manner whatsoever, nor, in fact, does any such difference exist. Nevertheless, the court bases its opinion upon such alleged difference in the meaning of the statutes which it says there is in "other respects," stating (Rec., p. 64):

"In view of this difference we do not feel con-
"strained to follow the interpretation given to the
"Colorado statute, even conceding the force of the
"identity of large portions of the other Arizona and
"Colorado statutes to which reference is made,
"and by reason of the general similarity of the
"phraseology of the two paragraphs set forth
"above, that the laws of Colorado were before

"the Legislature of Arizona when the Arizona "statutes in question were enacted, and supplied "a considerable portion thereof."

POINT II.

The majority of the Supreme Court of the Territory in its opinion further states (Rec.,p. 64):

"A careful examination of the case of Bell v. "Lathrop, *supra,* discloses that the language of "the statute in question was not construed. The "controlling factor in the conclusion reached in "that case was a provision of the constitution of "Colorado. While a Board of Equalization is "limited to the exercise of those powers only "which are clearly conferred upon it by law, and "while it would make no difference in the deter- "mination of the extent of such powers whether "they are conferred by statute or by constitution, "yet, on the other hand, statutes cannot confer "power upon public officers if that power is re- "stricted by constitutional provision. Therefore, "the statutes of Colorado could not confer powers "upon the State Boards of Equalization which by "a reasonable construction and application of the "constitution of Colorado that board could not "exercise. The Supreme Court of Colorado "could not construe the constituion and statutes "together so as to arrive at a reasonable construc- "tion of the law, but were under necessity first to "interpret the constitution and then to hold the "statutes to be limited by the constitution, no mat- "ter how much broader in their scopes the statutes "would be if not so limited."

It therefore becomes quite essential for us to ascertain if the statutes of Colorado are broader in their scope than the provisions of the Constitution. The provisions of the Constitution of the State of Colorado upon this subject is found in Section 15 of Article 10 (General Laws, State of Colorado, 1877, pp. 59-60), and is as follows:

> "Section 15. There shall be a State Board of "Equalization, consisting of the governor, state "auditor, state treasurer, secretary of state and "attorney general. Also in each county in this "State, a County Board of Equalization, consist- "ing of the board of county commissioners of said "county. The duty of the State Board of Equal- "ization shall be to adjust and equalize the valu- "ation of real and personal property among the "several counties of the State. The duty of the "County Boards of Equalization shall be to ad- "just and equalize the valuations of real and per- "sonal property within their respective counties. "Each board shall also perform such other duties "as may be prescribed by law."

This certainly is in no sense a limitation of the language of the statutes of Colorado above set forth. This constitutional provision simply confers power upon the State Board of Equalization to *adjust* and *equalize* the valuation of real and personal property among the several counties of the State. This is all the statute does. The statute is no broader than the constitutional provision, nor is the constitutional provision narrower than the statute, nor are the statutes of the Territory of Arizona above set forth,

under which authority is conferred upon the Territorial Board of Equalization, broader than the constitutional provision of Colorado. All that the Territorial Board of Equalization may do under the authority conferred upon it by the Arizona statute is to *adjust* and *equalize* the valuation of real and personal property among the several counties of the Territory. As was very clearly said by Justice SLOAN, in the *mandamus* case, *Territory vs. Board of Supervisors Yavapai County*, 84 *Pacific*, 519, at page 522, involving the issues as the case at bar:

> "The statutes confer no power or authority "upon the Territorial Board of Equalization to "make an original assessment of property, other "than railroads. It may equalize assessments "which have been made by the various assessors "and county boards of equalization. In doing "that it is not called upon, and, indeed, is not permitted, independently, to fix valuations. Its "power is restricted in this regard to the determination of the scale of valuation that should be "adopted in order to harmonize and equalize "assessments theretofore made, to the sole end and "purpose of securing reasonable uniformity of "valuation throughout the territory."

It is urged that in the interpretation of the Arizona statutes there are no constitutional limitations to be taken into consideration. However, this argument is entirely without force.

> "If it should appear that the assessments are "contrary to the letter or meaning of the statute,

"they must be set aside, even though they might "be also held invalid because inhibited by State or "National constitution. * * If an assessment is "contrary to a statute, it is just as invalid as if in- "hibited by the constitution; so if the assessments "here complained of cannot be sustained under the "general revenue law or the act specially applica- "ble to mining claims, there is no necessity for "going further to inquire if the constitution also "makes them vicious."

Pilgrim Consolidated Mining Company v. Board of Commissioners of Teller County, 32 Colo., 334.

The case of People *ex rel.* Crawford v. Lathrop, *supra,* has never been reversed or modified, but, on the other hand, approved in People v. Amos, 26 Colorado, 83, and reaffirmed in People v. Amos, 27 Colorado, 126. We find also that the reasoning in the case of People v. Lothrop, *supra,* has been followed by the Supreme Courts of many other states, and notably as follows:

State ex rel. Wallace v. State Board, 18 Mont., 473.

State ex rel. State Board v. Fortune, 24 Mont., 154.

Poe v. Howell, 67 *Pacific,* 62 (*New Mexico*) *nisi prius.*

M., K. & T. Ry. Co. v. Miami County Commissioners, 67 Kans., 434.

Chamberlain v. Cleveland, 31 Ohio State, 51.

Under the decison rendered in this case by the Supreme Court of Arizona, holding that the Board

may increase the aggregate valuation of property in the Terirtory above the aggregate valuations returned by the boards of supervisors of the several counties, the tax payer is entirely deprived of the safeguard provided by Paragraph 3831 of the Revised Statutes of 1901, which limits the rate of taxation for county and Territorial purposes. This statute is as follows:

> "3831. (Section 1.) There shall be levied, "annually, upon the real and personal property "within this Territory, the following taxes: For "Territorial revenue, not exceeding thirty-five "cents on each one hundred dollars of assessable "property, and such further sum or sums as shall "be necessary to meet the interest and payments "of the territorial bonds as provided by law; and "upon the same property the board of supervisors "of each county is also hereby authorized and em- "powered to levy and collect for county purposes "such additional and special taxes, not exceeding "two dollars upon each one hundred dollars value "of taxable property, and such further sum or "sums as shall be necessary to meet the interest "and payments of the county bonds as provided "by law."

For, of what avail to the tax payer is a limitation upon the rate of taxation, if the basis of the tax—the valuation of his property—may be increased at the will of the Territorial Board of Equalization, to an unlimited extent?

State v. Lothrop, 3 *Colorado,* 467, 468.

In thus increasing the aggregate valuation of

property in the Territory, the Territorial Board is clearly exercising a power neither expressly confered upon it by the statute, nor necessarily implied. It is the valuations of the various counties, each considered as an entirety, which are to be equalized, and the process of equalization never requires an increase in the sum total of the numbers or quantities which are to be equalized.

Point III.

THE TERRITORIAL BOARD OF EQUALIZATION, IN EQUALIZING AND ADJUSTING PROPERTY VALUATIONS BETWEEN THE SEVERAL COUNTIES, HAS NO POWER TO INCREASE OR DIMINISH THE VALUATIONS OF CERTAIN KINDS, CLASSES, SUB-CLASSES OR GRADES OF PROPERTY WITHIN ANY COUNTY. THE TERRITORIAL BOARD MUST DEAL WITH THE RESPECTIVE VALUATIONS AS RETURNED BY THE COUNTIES AS ENTIRETIES, BY MAKING SUCH CHANGES IN EACH COUNTY VALUATION AS A WHOLE AS WILL RELATIVELY EQUALIZE THE ENTIRE PROPERTY VALUES IN THE DIFFERENT COUNTIES.

The application for the writ discloses that the Teritorial Board of Equalization added to the assessment valuation of patented mines as a distinct class or sub-class of property. The Revised Statutes of the Territory of Arizona, 1901, pertaining to the classification of property for the purpose of taxation, are as follows:

"3831. (Section 1.) There shall be levied, "annually, upon the real and personal property

"within this Territory the following taxes: For "Territorial revenue, not exceeding thirty-five "cents on each one hundred dollars of assessable "property, and such further sum or sums as shall "be necessary to meet the interest and payments of "the territorial bonds as provided by law; and "upon the same property the board of supervisors "of each county is also hereby authorized and em- "powered to levy and collect for county purposes "such additional and special tax, not exceeding "two dollars upon each one hundred dollars value "of taxable property, and such further sum or "sums as shall be necessary to meet the interest "and payments of the county bonds as provided by "law."

"3835. (Section 5.) The term 'real estate,' "whenever used in this title, shall be taken to mean "and include the ownership of, or claim to, or "possession of or right or possession to any land "within the Territory; and the claim by possession "of any person, firm, corporation, association or "company to any land shall be listed under the "head of real estate: *Provided,* The term land "as used in this section shall not be so construed "as to include mining claims, either lode or placer; "the term 'personal property,' whenever used in "this title, shall be deemed and taken to mean, "and it is hereby declared to mean and include all "property of whatsoever kind or nature not in- "cluded in the term 'real estate,' as said term is "defined in this section. All personal property "in the hands of any trustee, agent, administrator, "executor or receiver and all personal property "mortgaged, or pledged shall, for the purpose of "taxation, be deemed to be the property of the

"person who has the possession thereof. When-
"ever solvent debts are assessed, the person
"assessed may deduct therefrom his liabilities."

"3836. (Sec. 6.) All taxable property must
"be assessed at its full cash value. The term 'cash
"value,' whenever used in this title, shall mean
"the amount at which the property would be taken
"in payment of a just debt due from a solvent
"debtor. Land, and improvements thereon, shall
"be separately assessed."

"3847. (Sec. 17.) Between the first Monday
"in February and the first Monday in June in each
"year, the county assessor, except as herein other-
"wise required of the Territorial Board of Equal-
"ization, shall ascertain, by diligent inquiry and
"examination, all property in his county, real or
"personal, subject to taxation; and also the names
"of all persons, corporations, companies or firms,
"owning, claiming or having the possession or
"control thereof, and he shall then determine the
"full cash value of all such property, and shall list
"and assess the same to the person, firm, corpora-
"tion, association or company owning or having
"the possession, charge or control thereof. The
"property of a ward shall be listed by his guard-
"ian; of a minor, having no guardian, by his
"father, if living, if not, then by his mother, if
"living, if not, then by the person having the prop-
"erty in charge; of a beneficiary for whom prop-
"erty is held in trust, by the trustee. The prop-
"erty of every deceased person shall be listed by
"the executor or administrator. The property of
"persons or corporations whose assets are in the
"hands of receivers shall be listed by such receiv-
"ers; of a body corporate, company, society or

"partnership, by its principal accounting officer, "agent or partner. Property under mortgage or "lease shall be listed by and taxed to the mort- "gagor or lessor, unless it be listed by the mort- "gagee or lessee. And all personal property in "the hands of any trustee, agent, administrator, "executor or receiver, and all personal property "mortgaged or pledged shall, for the purposes of "taxation, be deemed to be the property of the per- "son who has possession thereof. For the pur- "pose of enabling the assessor to make such assess- "ment, he shall demand from each person and "firm, and from the president, cashier, treasurer "or managing agent of each corporation, associa- "tion or company within his county, a statement "under oath or affirmation, of all the real estate "and personal property within the county, owned, "or claimed by, or in the possession or control of, "such person, firm, corporation, association or "company. If any person, officer or agent shall "neglect or refuse, on demand of the assessor or "his deputy, to give, under oath or affirmation, the "statement required by this section, or if the owner "of any property not listed by another person, "shall be absent or unknown, the assessor shall fill "out a list for such person, putting therein all tax- "able property which he has reason to believe is "owned by, in the possession or control of, said "person, officer or agent, liable to taxation. If "the name of such absent owner is known, the "property shall be assessed in his, her or their "name; if unknown to the assessor, the property "shall be assessed to 'unknown owners.' "

"3848. (Sec. 18.) It shall be the duty of "every person owning, or having charge of or un-

"der his control, property in this Territory, subject "to taxation, and as in this title provided, to make "out and deliver to the assessor, between the first "Monday in February and the first Monday in "June in each year, a correct list of the same as "required by law, whether he shall receive from "the assessor a notice or demand to do so or not; "and every assessment made against property sub- "ject to taxation shall be valid whether such notice "or demand was received or not."

"3849. (Sec. 19.) The said list shall contain, "first, his lands, by section or part of section, town- "ship and range, and where such part of section is "not a legal subdivision, or is unsurveyed, some "other description sufficient to identify it, and his "town lots, naming the town in which they are sit- "uated, and their proper description by number of "lot and block or otherwise, according to the sys- "tem of numbering in the town; second, the im- "provements on all such lands and town lots; "third, his personal property of every description, "or property held by him or under his control as "an agent or in any fiduciary capacity. The list "shall be signed and sworn to by the person mak- "ing it, and the oath may be administered by the "assessor or his deputy, or by any other officer au- "thorized to administer oaths."

"3861. (Sec. 31.) It shall be the duty of the "assessor to prepare a tax list or assessment roll, "alphabetically arranged, in the book or books "furnished him by the board of supervisors for "that purpose, in which book or books shall be "listed or assessed all the real estate and personal "property within the limits of the county, and in

"said book or books he shall set down in separate "columns:

"1. The name of the taxable inhabitants, "firms, incorporated companies or associations, in "alphabetical order, if known; if unknown, the "property shall be assessed to 'unknown owners'; "and if any person shall refuse to make a state- "ment of his property, under oath, as required by "this title, that fact shall be noted under his "name.

"2. All real estate taxable to each inhabitant, "firm, incorporated company or association, de- "scribed by metes and bounds, or by common "designation or name, if situate within the limits "of any city or incorporated town, describing by "lots or fractions of lots; if without said limits, "giving the number of acres as nearly as can con- "veniently be ascertained, and the location and "township where situate; all improvements upon "public lands, describing as nearly as possible the "location of such improvements: *Provided*, "That when two or more parties claim or give a "description of the same land, it shall be assessed "to each party making such claim or giving such "description, according to the estimated value of "the claims of each.

"3. The cash value of real estate and the im- "provements thereon.

"4. The cash value of all improvements on "real estate where the same is assessed to a person "other than the owner of said real estate.

"5. The cash value of all personal property "taxable to each person.

"6. The total value of all property taxable

"to each, and no further description of personal "property than that required by the foregoing "provision of this section shall be needed or be "requisite to render the assessment binding and "effective; and the description of real estate shall "be sufficient if the same can be readily identified "thereby."

"3868. (Sec. 38.) Said board (of super- "visors) shall have power to determine whether "the assessed value of any property is too small "or too large, and it may change and correct any "valuation, either by adding thereto or by deduct- "ing therefrom, if, in its judgment, from the in- "formation then possessed by it, the value fixed in "the assessment roll is too small or too large, "whether such value was fixed by the owner or "by the assessor; and if the board shall believe "it to be right to add to the assessed value of any "property, it shall cause this fact to be inserted in "the advertised notice hereinafter provided to be "given; but no assessment can be raised by the "board unless it is included in such advertised "notice."

"973. (Sec. 46.) The board of supervisors, in "their respective counties, have jurisdiction and "power, under such limitations and restrictions as "are prescribed by law: Subdivision 14. To "equalize assessments."

We are unable to find any respectable decision which holds that territorial or state boards of equalization may, without specific statutory authority and for the purposes of taxation, create certain kinds, classes, sub-classes or grades of property within a county, and then increase or diminish the valuation

of such classes and sub-classes so created. If this may be done at all, it may be done without limitation, and thus the territorial board of equalization might classify lands in high lands, bottom lands, cultivated lands, wild lands, meadow lands, pasture lands, wood lands, orchard lands, and, in fact, make every and any sort of a sub-classification, until each and every attribute of land was exhausted, and then under the guise of equalization re-assess the taxable value of such sub-classification of their own creation, thus constituting themselves a board of assessors, with power to fix and determine values, and this without notice to the tax payer or opportunity to him to appear and protest.

County of San Mateo v. Southern Pacific R. R. Co., 13 *F. R.*, 722.

County of Santa Clara v. Southern Pacific R. R. Co., 18 F. R., 325.

Justice CAMPBELL, with Justice DOAN concurring, in the dissenting opinion (Rec., p. 72), says:

"We find that the Legislature has classified real "estate for the purposes of taxation as follows: "Town or city lots, improvements thereon, land "outside of towns or cities, improvements thereon, "improvements on public lands, and nowhere in "the statutes are tax payers, assessors or boards of "supervisors required, either in express terms, or, "as I can perceive, by reasonable inference, to "make or to enter upon the assessment rolls fur- "ther or different classifications. Their full "statutory duty is performed when they have

"placed upon the roll real estate and valuations, "classified as the statute directs. * * *

"The majority of the court seems to rest the "power of the Territorial Board to increase or de- "crease valuations by sub-classes of real estate, "upon two propositions:

"First, that there is no *prohibition* upon the "assessors extending upon the rolls the description "of land beyond that required in the statute, so "as to designate its particular character; and, "therefore, having done so, the Board may act up- "on such sub-classifications. Second, they find "authority in Paragraph 973 for the Boards of Supervisors to require assessors to sub-classify real "estate upon the rolls, and in Paragraph 3877 "power in the Territorial Board to require the "County Boards to make return as a distinct class, "of any sub-classification appearing upon the "assessment rolls.

"I can see no force in the first contention. It "is leaving to the various assessors to say upon "what sub-classifications the Territorial Board "shall act. Next year they may choose to do "only what the law requires of them: place upon "the assessments rolls lands outside of cities and "towns by acres, without reference to whether "they are cultivated or grazing, mineral or non- "mineral. The clerks of the County Boards of "Equalization can only abstract what the rolls con- "tain. Therefore, the Territorial Board cannot, "under such conditions, know from the abstracts "that there are any mineral lands in the Territory. "I think I may without impropriety use for pur- "poses of illustration an allegation appearing in "the petition for writs of mandamus now pending

"in this court, involving the proceedings of the "Territorial Board. It appears that for the "year 1905 but two of the assessors of the various "counties placed upon the assessment rolls, as a "separate class, improvements upon patented "mines. It is a notorious fact that such improve- "ments exist in nearly, if not all of the counties of "the Territory—a fact that is probably within the "personal knowledge of every member of the "Board of Equalization—yet the assessors were "clearly within the law in returning them simply "as improvements upon land, and the Board is "prevented from equalizing such assessments in the "various counties.

"Conceding, as found by a majority of the "Court, that the supervisors may require the "assessors particularly to describe upon the rolls "the character of the lands, it would seem to be a "discretionary power. It is reading too much in- "to the statute to say that Paragraph 3877 gives "the Territorial Board supervisory power over "the County Board in the exercise of their duties "regarding the preparation of tax rolls. I con- "strue the provision, 'but the Territorial Board of "Equalization is authorized to diminish or add to "the above list, and to require such different or "further matters to be returned as it may deem "advisable,' to empower the Board only to require "the Clerk of the County Board to abstract by "classes the property included within 'the gross "amount of all other property.' I do not under- "stand the majority opinion to hold that the Ter- "ritorial Board may require the County Boards to "require assessors to so describe lands upon the "assessment rolls that they may be sub-classified,

"but only to hold that when the assessors have so "described it, the Territorial Board may require "the County Boards to abstract the information "the rolls contain. This leaves the Territorial "Board without power to cause the information to "be placed upon the rolls should the Board of Su- "pervisors not choose so to direct the assessors. "What we are seeking is the true intent and mean- "ing of the Legislature, and surely it cannot be "said that the Legislature meant to leave the Ter- "ritorial Board, in the exercise of such important "powers, dependent upon the will of the various "Boards of Supervisors."

This particular question was before the Supreme Court of Colorado January 17, 1900, under the Colorado-Arizona statute, in the case of *People v. Ames,* 27 Colorado, 126. The State Board of Equalization, purporting to have adjusted and equalized valuations of property between the several counties, which resulted in certain changes in the assessments as returned by the respective county assessors, directed such officers to make the alteration in their respective assessment rolls necessary to conform to the action and direction of the Board. This order the respondent refused to obey. To compel him to comply, therefore, the proceeding of mandamus was instituted. From the writ and return it appeared that the Board in equalizing and adjusting property valuations between the several counties increased and diminished the valuation of certain kinds, classes and grades in Arapahoe County, varying in increase from 2 to 54 per cent., and in de-

crease from 7 1-2 to 14 per cent. The respondent justified his refusal to comply with the order of the Board upon the ground that it had no authority to adjust and equalize valuations of property in Arapahoe County in the manner it did. The court says:

"The State Board has no authority to revise "the work of the County Board. Therefore, it "has no power to equalize valuations between "classes and kinds of property in the respective "counties, for that is a matter the constitution con- "fides to the County Board. In order, then, that "the two Boards may work harmoniously, the "action of one not interfere with the other, and "the authority of each, within its own proper "sphere, be supreme, it must necessarily follow "that the State Board, in equalizing and adjusting "values, must deal with the respective valuations "as returned by the county assessors as entireties, "by making such changes in each county valuation, "as a whole, as will relatively equalize the entire "property values in the different counties, so that "the burden of supporting the state government "shall rest proportionately upon each. In the "case at bar, the State Board has not adjusted or "equalized property valuations in Arapahoe Coun- "ty in the manner which the law contemplates, but "in selecting different clases and kinds of property, "and raising or lowering their values, has usurped "the functions of the County Board and attempted "to revise its action in this respect. In pursuing "this method it has clearly transcended its author- "ity, undertaken to perform acts which it had no "power to do, and having but special and limited "jurisdiction as a Board of Equalization, all acts

"outside of its authority are void." Citing:

People v. Lathrop, 3 Colorado, 428.

People v. Lawrence, 6 Hill, 244.

Wells, Fargo & Co. v. State Board of Equalization, 56 California, 194.

State v. Vaile, 122 Mo., 33.

State v. Thomas, 16 Utah 86.

In the case of *Orr v. State Board of Equalization*, 2 Idaho, 923, the State Board of Equalization added to the valuation of sheep of Bingham County an amount sufficient to fix the valuation thereof at the sum of $2.50 a head, and in like manner the said Board added to the valuation of cattle for the purpose of taxation a percentage of ten per cent. on the assessed valuation thereof as returned by the assessors of Bingham County, and made other changes in certain other classes of property. The Court says:

"The State Board of Equalization is wholly "the creature of the law. It has no authority except "that which is given by the Act of March 14, "1891. * * * No power whatever is given to the "Board to raise or diminish any class or classes of "property by any percentage or in any manner "whatever. No power is given it to assess or fix "the value of any kind of property. * * *

"What they can do may be given in a few "words. They may add to or take from the ag- "gregate valuation of real and personal property of "a county a certain percentage. The statute hav- "ing specified what they may do, necessarily ex-

"cludes every other power. It may be granted "without argument that this will not enable the "board to fix a uniform rate of assessment upon "the different classes of property throughout the "State. It may be granted that the assessor of "one county may value cattel at $10 per head, and "the assessor of an adjoining county may value the "same class of property at $15 a head, and there is "no remedy within the power of the State Board "except to raise or lower the aggregate valuation "of all the property in the county. If it was in-"tended by the Legislature to give the Board of "Equalization the power to raise or lower certain "classes of property in the county, which would "seem to be desirable, it has utterly failed to do so. "This court can not add to or take from the words "of the statute."

See also:

State ex rel. State Board v. Fortune, 24 Mont., 154.

State v. Thomas, 16 Utah, 86.

Wells, Fargo & Co. v. Board of Equalization, 56 Calif., 190.

Nor has a State Board anything to do with adjusting the valuations of different parcels of land in the same county. Inequalities between parcels of lands or classes of land in the same county are matters within the exclusive jurisdiction of the County Board.

State ex rel. Wyatt vs. Vaile, 122 Mo., 33.

Moreover, it will be noted that patented mines, as such, have never been subject to legislation in the

Territory of Arizona, and that such pretended subclassification of lands is purely the creation of the Territorial Board of Equalization itself.

This question was also before the Supreme Court of Nebraska in the case of *Hacker v. Howe*, 101 N. W., 255, in which the Court says, at page 260:

> "Concerning the contention that the State "Board in respect of the action taken did not "equalize, but re-assessed the property of the sev- "eral counties, raising the aggregate valuations "thereof according to the percentage applied to "each county, it may be said that manifestly the "Board has no power to increase valuations mere- "ly for the purpose of making such increase. The "limitations of law relative to tax levies, the fix- "ing of valuations and the equalization thereof "cannot be nullified and rendered impotent by an "attempt to increase the aggregate of the grand "assessment rolls under the guise of equaliza- "tion. * * *
>
> "The State Board does not deal with individual "assessments, but with the property of the county "as a whole, and if it appears to them to be assessed "at a valuation relatively lower or higher than the "property in all the other counties, the whole is "affected by the order of equalization, and not the "different items or classes. Individual discrep- "ancies and inequalities, the law contemplates "shall be corrected and equalized by the county "authorities."

POINT IV.

Finally, after a very exhaustive discussion of the Colorado-Arizona statutes and the case law upon the

question, counsel for appellee feel called upon to invoke the dictrine of "practical construction." The doctrine of practical construction is wholly inapplicable to the case at bar, for the reasons:

1. That the authority under which the Territorial Board of Equalization may act must be found in some *express* provision of the statute, it being a board of limited jurisdiction.

2. That the statutes sought to be construed, before their adoption had received judicial interpretation, and therefore this is not a case in which the construction involved is really one of doubt.

3. The authority attempted to be exercised by the Board of Equalization under its construction of the statute does not relate to mere matters of form, but concerns the substance of the legislation.

4. That no rights have accrued by reason of such reliance upon a practical construction.

5. That the present case is the first instance of the attempt of the Territorial Board of Equalization to raise this sub-classification of property, namely, patented mines. (Rec., pp. 55-60.)

The law upon this subject is clearly stated in the case of *Studebaker v. Perry*, 184 U. S., 258, in which Justice SHIRAS says, at page 269:

> "The doctrine invoked is a useful one, but its "application should be restricted to cases in which "the construction involved is really one of doubt, "and that those to be affected have relied upon the "practical construction, and rights have accrued

"by reason of the reliance. The rule is well ex-
"pressed in Cooley on Constitutional Limitations,
"5th Edition, p. 69:

"'If the question involved is really one of
"doubt, the force of their (officers) judgment,
"especially in view of the injurious consequences
"that may result from disregarding it, is fairly
"entitled to turn the scale in the judicial mind.
"Where, however, no ambiguity or doubt appears
"in the law, we think the same rule obtains here as
"in other cases, that the court should confine its
"attention to the law, and not to allow intrinsic
"circumstances to introduce a difficulty where the
"language is plain. To allow force to a practical
"construction in such a case would be to suffer
"manifest perversion to defeat the evident pur-
"pose of the lawmakers.'"

Westbrook v. Miller et al., 56 Mich., 152
(By Justice COOLEY.)

Black on Interpretation of Laws, page 221.
"Acquiescence for no length of time can legalize a clear usurpation of power."

Cooley on Constitutional Limitations, 7th
Edition, p. 106.

The judgment of the Supreme Court of the Territory of Arizona should be reversed.

Respectfully submitted,

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